

Appln. No.: 10/563,659
Amendment Dated December 19, 2007
Reply to Office Action of November 19, 2007

BPD-102US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No: 10/563,659
Applicant: Peter Schwind *et al.*
Filed: February 20, 2007
Title: DEVICE AND METHOD FOR SIMULTANEOUSLY IDENTIFYING BLOOD
GROUP ANTIGENS
TC/A.U.: 1641
Examiner: Bao Thul L Nguyen
Confirmation No.: 5376
Docket No.: BPD-102US

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This is in response to the Restriction Requirement of November 19, 2007.

The Examiner requires that claims of either Group I, claims 1-9, drawn to a device, or Group II, claims 10-19, drawn to a method for using the device, be elected for prosecution. Applicants elect to prosecute the claims of Group I, claims 1-9, drawn to a device. This election is made with traverse.

Applicants traverse the Examiner's restriction requirement for the following reasons. The claims of Group I, claims 1-9, are drawn to a device. The claims of Group II, claims 10-19, are drawn to a method of using the device. The Examiner alleges that the inventions listed in Groups I and Group II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical feature. This position is respectfully traversed.

The Examiner's position is that the device is anticipated by May, WO 88/08534 ("May"). This position is respectfully traversed.

Claim 1 is drawn to a device for the simultaneous and qualitative or quantitative determination of a plurality of analytes in a liquid sample. The device comprises a membrane with the following features:

- an application zone;
- at least one group of at least two indicator zones;
- at least one absorption region; and
- at least two different flow tracks which are substantially parallel.

Disclosure a membrane that has as a feature "at least two different flow tracks which are substantially parallel" is missing from the disclosure of May. May discloses devices with either a plurality of detection zones arranged in series on the porous solid phase or two or more discrete bodies of porous solid phase material (*i.e.*, separate membranes) in parallel.

Figure 7, for example, shows circular zones 209 and 210, in which the determination of analyte takes place in first circular zone 209 and circular zone 210 can act as a control. See, May, page 21, lines 30, to page 22, line 9. These detection zones are arranged in series on the porous solid phase.

May also discloses:

If desired, a device according to the invention can incorporate two or more discrete bodies of porous solid phase material, e.g., separate strips or sheets, each carrying mobile and immobilized reagents. These discrete bodies can be arranged in parallel, such that a single application of liquid sample to the device initiates sample flow in the discrete bodies simultaneously.

May, page 12, lines 6-14 (emphasis added).

In this passage, May discloses separate strips or sheets arranged in parallel, not two different tracks on the same membrane arranged in parallel.

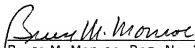
Anticipation requires that each and every limitation of the claim be disclosed, either expressly or under principles of inherency, in a single prior art reference. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Absence from the reference of any claimed limitation negates anticipation. *Rowe v. Dror*, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997). Inherency requires that the missing descriptive material be necessarily present, not merely probably or possibly present, in the prior art. *Rosco, Inc. v. Mirror Lite Co.*, 64 USPQ2d 1676, 1680 (Fed.

Cir. 2002). Disclosure of a membrane that has as a feature "at least two different flow tracks which are substantially parallel" is missing from the disclosure of May. Therefore, the neither subject matter of independent claim 1, nor the subject matter of claims 2-9 dependent thereof, is anticipated by May.

Because, for the reasons stated above, the device claimed in applicants' claims 1-9 is not anticipated by May, the claims of Group I and Group II contain the same or a corresponding technical feature and, therefore, relate to a single general inventive concept under PCT Rule 13.1. The restriction requirement is improper and should be withdrawn.

The Examiner is invited to phone applicant's attorney if it is believed that a telephonic or personal interview would expedite prosecution of the application.

Respectfully submitted,



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Dated: December 19, 2007

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The Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

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